

## CHAPTER 21

### NON-COMBATANT EVACUATION OPERATIONS (NEO)

#### REFERENCES

1. DoD Directive 3025.14, *Non-Combatant Evacuation Operations*, 5 November 1990.
2. DoD Directive 2000.11, *Handling Requests for Political Asylum and Temporary Refuge*, 3 March 1972.
3. Executive Order No. 12656, Assignment of Emergency Preparedness Responsibilities, 3 C.F.R. 585 ('88 Compilation), 18 November 1988.
4. Chairman, Joint Chiefs of Staff Instruction 3121.01A, *Standing Rules of Engagement (SROE) for U.S. Forces*, 15 January 2000 (portions of this document are classified SECRET).
5. Executive Order 11850, Renunciation of Certain Uses in War of Chemical Herbicides and Riot Control Agents, 3 C.F.R. 980 ('71-75 Compilation) 8 Apr 75, reprinted in FM 27-10 at C.1 p. 2 (56).
6. Vienna Convention on Diplomatic Relations, open for signature Apr. 8, 1961, 23 U.S.T. 3227, T.I.A.S. 7502, 500 U.N.T.S. 95.
7. DoD Directive 5515.8, *Single-Service Assignment of Responsibility for Processing of Claims*, 9 June 1990.
8. FMFM 8-1, *Special Operations* [See Chapter 26] 13 August 1974.
9. JAG INST 5800.7C, Manual of the Judge Advocate General, Sec. 1013, 3 October 1990.
10. FM 90-29, Non Combatant Operations, 20 May 1994.
11. Steven Day, *Legal Considerations in NEOs*, 40 Naval L. Rev. 45, 1992.

#### NATURE AND CHARACTERISTICS OF NEOS

NEOs are operations directed by the Department of State (DoS), the Department of Defense (DoD), or other appropriate authority whereby noncombatants are evacuated from areas of danger overseas to safe havens or to the United States. Recent examples include:

Somalia (Eastern Exit): 300 civilians, U.S. & Soviet Ambassadors extracted, January 1991.

Rwanda (Distant Runner): 230 civilians, April, 1994.

Liberia (Assured Response): 2200 civilians, April-June 1996.

Central African Republic (Quick Response): April 1996.

Albania (Silver Wake): 900 civilians, March-April 1997

#### COMMAND AND CONTROL

Executive Order 12656 assigns primary responsibility for safety of U.S. citizens abroad to the Secretary of State.

**Department of State** establishes and chairs the "Washington Liaison Group" (WLG) to oversee NEOs.

- WLG membership consists of representatives from various government agencies. (DoS, DoD, CIA, DIA, DoT, DHHS).
- Function of WLG is to ensure national-level coordination of government agencies in effecting a NEO.

- WLG also serves as coordinator with Regional Liaison Groups (RLGs).

**Chief of Diplomatic Mission** or principal officer of the Department of State is the lead official in threat area responsible for the evacuation of all U.S. noncombatants.

- Chief of Mission will give order for the evacuation of civilian noncombatants, except for Defense Attaché System personnel and DIA personnel.
- Evacuation order of military personnel is given by CINC, but in reality the call is made by the Chief of Mission.
- Chief of Mission is responsible for drafting evacuation plan (usually done by Regional Security Officer (RSO)).

**Secretary of Defense** plays a supporting role in planning for the protection, evacuation and repatriation of U.S. citizens in threat areas.

- Within Department of Defense, responsibility for NEO assigned under DoD Directive 3025.14.
- DoD assigns members from service components and Joint Staff to WLG.
- Department of the Army is executive agent for the repatriation of civilians following the evacuation. Accomplished through establishment of Joint Reception Center (JRC)/Repatriation Processing Center.

#### **CINCs**

- Prepare and maintain plans for the evacuation of noncombatants from their respective area of operations (AO).
- Planning accomplished through liaison and cooperation with the Chiefs of Mission in the AO.
- Assist in preparing local evacuation plan.
- Rules of Engagement guidance for NEOs are found in Enclosure A of CJCS SROE.

#### **Amendment to Executive Order 12656**

An amendment to E.O. 12656 and a new Memorandum of Understanding between the Department of Defense and the Department of State address the relative roles and responsibilities of the two departments in a NEO. The Department of State retains ultimate responsibility for Noncombatant Evacuation Operations.

On 9 February 1998, the President amended Executive Order 12656 to state that the Defense Department is “responsible for the deployment and use of military forces for the protection of U.S. citizens and nationals and in connection therewith, designated other persons or categories of persons, in support of their evacuation from threatened areas overseas.” The Executive Order states that the amendment was made in order to “reflect the appropriate allocation of funding responsibilities” for NEOs. The E.O. refers to “procedures to be developed jointly by the Secretary of Defense and the Secretary of State” in order to implement the amendment. DoS and DoD subsequently signed a memorandum of understanding that addresses those procedures.

On 14 July 98, the Department of State and Department of Defense entered into a Memorandum of Understanding (MOU) concerning their “respective roles and responsibilities regarding the protection and evacuation of U.S. citizens and nationals and designated other persons from threatened areas overseas.”

- DoS retains ultimate responsibility for NEOs, except that DoD has responsibility for a NEO from the U.S Naval Base at Guantanamo. (Sections C.2. and C.3.b.)

- DoD also prepares and implements plans for the protection and evacuation of DoD noncombatants worldwide. In appropriate circumstances, the Secretary of Defense may authorize the evacuation of DoD noncombatants, after consultation with the Secretary of State. (Section C.3.c.)
- “Once the decision has been made to use military personnel and equipment to assist in the implementation of emergency evacuation plans, the military commander is solely responsible for conducting the operations. However, except to the extent delays in communication would make it impossible to do so, the military commander shall conduct those operations in coordination with and under policies established by the Principal U.S. Diplomatic or Consular Representative.” (Section E.2.)
- The MOU includes a “Checklist for Increased Interagency Coordination in Crisis/Evacuation Situations” and a DoS/DoD Cost Responsibility Matrix with Definitions. Under the Matrix, DoS is responsible for “Evacuation Related Costs” and DoD is responsible for “Protection Related Costs.”

## LEGAL ISSUES INVOLVED IN NEOS

**1. International Law.** NEOs fall into three categories: permissive (where the host country or controlling factions allow the departure of U.S. personnel), non-permissive (where the host country will not permit U.S. personnel to leave) and uncertain (where the intent of the host country toward the departure of U.S. personnel is uncertain). The non-permissive and uncertain categories raise the majority of legal issues because “use of force” becomes a factor.

**Use of Force.** Because non-permissive NEOs intrude into the territorial sovereignty of a nation, there must be a legal basis. As a general rule, international law prohibits the threat or use of force against the territorial integrity or political independence of any state. While there is no international consensus on the legal basis to use armed forces for the purpose of NEOs, the most common bases are cited below:

Custom and Practice of Nations (pre-UN Charter) clearly allowed NEOs—a nation could intervene to protect its citizens located in other nations when those nations would not or could not protect them.

### UN Charter

Article 2(4): Under this article, a nation may not threaten or use force “against the territorial integrity or political independence of any state . . . .” One view (a minority view) holds that NEOs are of such a limited duration and purpose that they don’t rise to the level of force contemplated by article 2(4).

Article 51: U.S. position is that article 51’s “inherent right of individual or collective self-defense” includes the customary pre-charter practice of intervention to protect citizens. There is no international consensus on this position.

**Sovereignty Issues.** Planners need to know the territorial extent of the countries in the Area of Operations. Absent consent, U.S. forces should respect the territorial boundaries of countries in the ingress and egress routes of the NEO.

Extent of territorial seas and airspace: Law of Sea allows claims of up to 12NM. Chicago Convention limits state aircraft to international airspace or to domestic airspace with consent. There is a right of innocent passage through the territorial seas. Innocent passage poses no threat to territorial integrity. Air space, however, is inviolable. There is no right of innocent passage for aircraft. Only “transit passage” allows over-flight over international straits. See Chapter 7 of this Handbook for more information. Note that airspace and territorial sea boundaries are not a consideration for the target nation of a non-permissive NEO.

Rights and duties of neutral states. Neighboring states may have concerns that permitting over-flight or staging areas may cause them to lose their “neutrality” with the target state. To the extent that the concept of “neutrality” still exists in international law, such action may jeopardize relations between the two countries. Establishing “Safe havens,” however, does not violate neutrality concepts. A safe haven is a stopover point where evacuees are initially taken once removed from danger. They are then taken to their ultimate destination.

2. **Status of Personnel.** In NEOs, commanders will face a multitude of legal issues regarding the personnel encountered on the ground.

Captured Combatants. **Treatment (not Status)** derives from Articles 2, 3, and 4 of the Third Geneva Convention. U.S. policy is to treat all captured personnel as prisoners of war while in our custody, but to leave them in host nation upon departure.

Civilians seeking refuge: Temporary Refuge v. Asylum.

U.S. Policy: DoD Directive 2000.11 sets out procedures for Asylum/Temporary Refuge. U.S. Commanders may not grant political asylum to foreign nationals. Immigration and Naturalization Service, Department of Justice is lead agency for granting asylum requests. U.S. Commanders may, however, offer temporary refuge in emergencies.

General policy: If applicant makes request at unit or installation located within territorial jurisdiction of a foreign country (to include territorial waters), then:

**Asylum** may not be granted, but the request is forwarded via immediate message to ASD (International Security Affairs) and applicant referred to appropriate diplomatic mission.

**Temporary refuge** will be granted (if requester is in **imminent danger**), ASD (ISA) informed, and applicant will not be surrendered without Service Secretary approval.

If applicant makes request at unit, installation, or vessel in U.S. territorial waters or on the high seas, then the applicant is “received” and request for asylum forwarded to DoJ. Do not surrender applicant to foreign power without higher headquarters approval (MilDep level).

Status of U.S. Embassy Premises and the Grant of Diplomatic Asylum.

Usually a NEO will involve actions at the U.S. embassy or consulate. Therefore, it is important to understand the special status of embassy property and the status of persons who request asylum on that property.

The status of the premises may depend on whether the mission is an embassy or a consul; whether the U.S. owns the property or leases it; and whether the host country is a signatory to the Vienna Convention on Diplomatic Relations. If the mission is an embassy, owned by the U.S. and in a foreign country that is a signatory - the premises are inviolable. Even if these conditions are not met the premises are usually inviolable anyway due to reciprocal agreements with host nations under the Foreign Missions Act. Diplomatic missions are in a foreign country only at the invitation of that country. Most likely that nation will have a mission in the U.S. and thus enjoy a reciprocal relation of inviolability. (Information from the Department of State Legal Counsel’s Office)

The Vienna Convention on Diplomatic Relations, April 18, 1961, 23 U.S.T. 3227, 500 U.N.T.S. 95. Article 22 “The premises of the [diplomatic] mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of mission.... the mission shall be immune from search, requisition, attachment or execution.”

The Foreign Missions Act (Pub. Law 88-885, State Department Basic Authorities Act of 1956 Title II, Sections 201-213.) Establishes procedures for reciprocal agreements to provide for the inviolability of diplomatic missions.

Diplomatic Asylum. The grant of political asylum on embassy premises has been “circumscribed little by little, and many states have abandoned the practice, normally by issuing instructions to their diplomatic agents.” Today the extensive practice of the grant of diplomatic asylum appears to be restricted to missions in the Latin America republics. (Gerhard von Glahn, *Law Among Nations*, 6<sup>th</sup> ed., 309)

DoD Inst. 2200.11. States in paragraph IV(B)(2)(a)(2) that persons who request political asylum in territories under foreign jurisdiction “will be advised to apply in person at the nearest American Embassy or Consulate, subject to the

internal procedures published by the Chief of Missions.” Requests for political asylum will be governed by the appropriate instructions applicable to the diplomatic mission.

### **3. Law of War Considerations**

Targeting. Rule of Thumb: follow targeting guidance of Hague Regulations, Geneva Conventions, and applicable articles of the 1977 Protocols regardless of whether NEO is “international armed conflict.” Under CJCSI 5810.01 of 12 August 1996, U.S. armed forces will apply the principles of the law of war in military operations other than war. Use of Force guidance for NEOs found in Enclosure G of the CJCS SROE (CJCSI 3121.01A).

Riot Control Agents (RCA). E.O. 11850 allows use of RCA in non-armed conflict and defensive situations, to include “rescue of hostages.” But the Chemical Weapons Convention prohibits use of RCA as a “method of warfare.” Whether use of RCA in a NEO is a “method of warfare” may depend on the circumstances of the NEO. However, under E.O. 11850, Presidential approval is always required prior to RCA use, this approval may be delegated through the CINC. Authorization to use RCA would normally be requested as a supplemental ROE under Enclosure J to the CJCS SROE.

Drafting ROE. Coordinate CINC forces ROE with ROE of Marine Security Guards (who work for DoS), Host Nation Security, and Embassy Security. As always, ensure inherent right of self-defense is addressed adequately.

### **4. Search Issues.**

Search of Evacuee’s Luggage and Person. Baggage will be kept to a minimum, and civilians will not be allowed to retain weapons. In accordance with the Vienna Convention on Diplomatic Relations, the person and personal luggage of diplomatic personnel are inviolable if the Diplomat is accredited to the U.S. (which would be rare in a NEO). Even if they were accredited, luggage may be inspected if “serious grounds” exist to suspect that luggage is misused. “Accredited” diplomatic bag retains absolute inviolability.

Force protection, however, is paramount. If a commander has a concern regarding the safety of aircraft, vessels, ground transportation or evacuation force personnel due to the nature of the personnel being evacuated, he may order a search of their person and belongings as a condition to evacuation. Diplomatic status is not a guarantee to use U.S. transportation. If diplomat refuses to be searched—to include their diplomatic bag, CDR may refuse transportation.

